



## Legislation Details (With Text)

**File #:** 19-432      **Version:** 1      **Name:**  
**Type:** Resolution      **Status:** Mayor's Office  
**File created:** 7/25/2019      **In control:** City Council  
**On agenda:** 8/27/2019      **Final action:** 8/27/2019  
**Title:** A Resolution authorizing the use of Eminent Domain to acquire real property interests owned by Goetsch Peacock, LLC for the Cottonwood Creek Detention Basin PR-2 Project.

**Presenter:**  
Jeff Dunn, PE, Stormwater Enterprise

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. Resolution Goetsch Peacock Property, 2. Exhibit A -Lopez Recorded Deed, 3. Exhibit B -Tutt Goetch Peacock Easement Rec No. 212048184, 4. Exhibit C - Tutt Goetch Peacock Easement Rec No. 212048281, 5. Aug 27 Council Presentation, 6. Signed Resolution 81-19.pdf

Date	Ver.	Action By	Action	Result
8/12/2019	1	Council Work Session	referred	

A Resolution authorizing the use of Eminent Domain to acquire real property interests owned by Goetsch Peacock, LLC for the Cottonwood Creek Detention Basin PR-2 Project.

### Presenter:

Jeff Dunn, PE, Stormwater Enterprise

### Summary:

The attached resolution authorizes staff to proceed with the use of a Possession and Use Agreement and/or Eminent Domain to acquire real property interests owned by Goetsch Peacock, LLC for the Cottonwood Creek Detention Basin PR-2 Project ("Project"). Despite attempts by the City to negotiate an amicable acquisition of the interests, the City has been unable to negotiate an agreement for the acquisition. Staff will continue to make all reasonable efforts to reach a negotiated settlement with Goetsch Peacock, LLC. However, obtaining the authority to proceed with a Possession and Use Agreement and Eminent Domain will allow the City to meet Project construction deadlines and avoid Project delays if an agreement cannot be reached.

### Previous Council Action:

1. City Council adopted Resolution No. 36-16 on April 20, 2016 authorizing execution of the Intergovernmental Agreement with Pueblo County ("IGA") in which the City agreed to fund stormwater infrastructure and complete capital projects including this Project.

2. City Council passed Ordinance 18-29 on April 12, 2018 authorizing appropriations from the General Fund totaling \$346,506 to construct this Project.

3. City Council adopted Resolution 6-19 on January 22, 2019 authorizing the purchase of 1.74 acres of property for \$100,000 to construct this Project.

**Background:**

The City is party to an IGA with Pueblo County which requires it to complete defined stormwater projects. This Project is one of several flood control facilities located within the Cottonwood Creek drainage basin identified in the IGA as a high priority project. Once constructed, the Project will provide stormwater flow control for a six (6) square mile watershed. The embankment and culvert will impound stormwater runoff to reduce discharge rates during a 100-year storm event.

The Project requires the construction of a roadway embankment over Cottonwood Creek which will also allow for the extension of Tutt Boulevard. In order to construct the embankment and extend Tutt Boulevard, the City must “fill” across Cottonwood Creek.

The City spent \$100,000 acquiring real property (the “City Property”) for construction of the Project. Goetsch Peacock, LLC owns two easements (the “Interests”) on the City Property that restrict earthwork operations (cutting and filling). Thus, to construct the Project, the City must unencumber the City Property of Goetsch Peacock’s Interests.

Negotiations with Goetsch have been unsuccessful to this point. Although the City of Colorado Springs estimated the value of the Interests to be less than \$5,000, the City obtained an appraisal of the Interests and, on July 17, 2019, made an offer to acquire the Interests based on the appraisal. Goetsch Peacock, LLC has not responded to the City’s offer.

**Financial Implications:**

The Interests will be acquired using Stormwater Enterprise funds. Goetsch Peacock, LLC will be afforded just compensation for its Interests, either through a negotiated settlement or a court proceeding.

**Board/Commission Recommendation:**

N/A

**Alternatives:**

The City Council may approve, modify or deny approval of the attached resolution.

**Proposed Motion:**

Move to approve the Resolution authorizing the City Attorney to take all action necessary to acquire the property interests and to seek immediate possession of the property interests by a voluntary Possession and Use Agreement, eminent domain, or other appropriate proceedings.